#### PRE-COURSE WORK ASSIGNMENT

COURSE: Fire Program Management, M-581

**LESSON:** C - Grants, Agreements and Operating Plans

**UNIT:** 3 - Program Management

**SUGGESTED TIME:** 2 hours

**EQUIPMENT:** Internet access

**MATERIALS:** Pre-course Work Assignment Questions and the following electronic

presentations.

• Grants, Agreements, and Operating Plans

Authorization Authority

Agreement Instruments

**OBJECTIVES:** Upon completion of the pre-course work, participants will be able to

actively participate in the classroom discussion and exercise.

### M-581 Fire Program Management

| Pre-Course Work<br>Due to NAFRI by April 6, 2005 |   |   | Name:  |
|--|---|---|--|
|  |   |   | Email:   |
|  |   |   | Work phone:  |
| 3C AC  |   | /ITY 1  ig an electronic presentation and ans   | wering questions.  |
| A.   | Th  | TRODUCTION is pre-course activity will furnish the kercise during the classroom portion o | knowledge to participate in the discussion and f the lesson. |
| В.   | B. ASSIGNMENT<br>View the Grants, Agreements, and Operating Plans electronic presentation (pgs. 9 and answer the following questions. |   | rating Plans electronic presentation (pgs. 9 - 35)           |
|  | 1.  | What is the "Guiding Principle" that  | provides the basis for interagency cooperation?              |
|  |   |   |  |
|  |   |   |  |
|  | 2.  | Lists four Working Teams of the Nat   | tional Wildfire Coordinating Group.                          |
|  |   | a.  |  |
|  |   | b.  |  |
|  |   | c.  |  |
|  |   | d.  |  |
|  | 3.  | What is Cooperation?  |  |
|  |   |   |  |
|  | 4.  | What are the three main activities us   | sed when cooperating with external partners?                 |

| 5. | What federal agency has a specific mission to assist State Foresters and private landowners?                                 |
|----|--|
| 6. | What three types of authority are needed to enter into any agreement?  |
|    | a.   |
|    | b.   |
|    | C.   |
|    |  |
| 7. | What Act and Section of the Act allows federal wildland fire fighting agencies to contract with other governmental entities? |
|    |  |
| 8. | What is a Master Cooperative Fire Protection Agreement?  |
|    |  |
|    |  |
|    |  |
|    |  |
| 9. | List the five requirements for an Operating Plan.  |
|    | a.   |
|    | b.   |
|    | C.   |
|    | d.   |
|    | e.   |
|    |  |

| 10. | List the six formal steps in developing Cooperative Agreements. |
|-----|---|
|     | a.  |
|     | b.  |
|     | C.  |
|     | d.  |
|     | e.  |
|     | f.  |
|     |   |

### M-581 Fire Program Management

| Pre-Course Work Due to NAFRI by April 6, 2005 |    |      |   | Name: Email: Work phone:   |
|---|----|------|---|--|
| 3C  |    |      | <b>/ITY 2</b><br>g an electronic presentation and ansv  | vering questions.  |
|   | Α. | Thi  | <b>RODUCTION</b> s pre-course activity will furnish the kercise during the classroom portion of | nowledge to participate in the discussion and the lesson.  |
|   |    | Viev | SIGNMENT v the Authorization Authority presental estions.                                       | ation (pgs. 36-51) and answer the following  |
|   |    | a.   |   | ice to accept money received as contributions restigations, management studies or protection system lands? |
|   |    | b.   | What does the Granger-Thye Act a  | uthorize?  |
|   |    |      |   |  |
|   |    | C.   |   | services, supplies, materials or equipment from agencies have the authority to do the work?                |
|   |    | d.   | What does the Interior and Related A  | Agencies Appropriations Act authorize?   |
|   |    |      |   |  |
|   |    | 5    | What does the Cooperative Funds a   | nd Deposits Act authorize?   |

### M-581 Fire Program Management

| Pre-Course Work<br>Due to NAFRI by April 6, 2005 |   |    |  | Name:<br>Email:<br>Work phone:                            |  |
|--|---|----|--|---|--|
| 3В   |   |    | /ITY 3 ig an Agreement Instruments present   | ration (pgs. 52 - 75) and answering questions.            |  |
|  | A.  | Th | TRODUCTION is pre-course activity will furnish the le<br>ercise during the classroom portion o | nowledge to participate in the discussion and the lesson. |  |
|  | B. ASSIGNMENT<br>View the Agreement Instruments presentation (pgs. 52 - 75) and answer the following questions. |    |  | ntation (pgs. 52 - 75) and answer the following           |  |
|  |   | 1. | What are three main activities when  | working with external parties?                            |  |
|  |   |    | a.   |   |  |
|  |   |    |  |   |  |
|  |   |    | b.   |   |  |
|  |   |    | С.   |   |  |
|  |   |    | C.   |   |  |
|  |   |    |  |   |  |
|  |   | 2. | What are the three broad types of in parties?  | struments that document work with our externa             |  |
|  |   |    | a.   |   |  |
|  |   |    | b.   |   |  |
|  |   |    | C.   |   |  |
|  |   | 3  | When are Grants and Cooperative A  | Agreements used?  |  |

| 4. | List six types of agreements related to the Fire Program. |  |  |
|----|---|--|--|
|    | a.  |  |  |
|    | b.  |  |  |
|    | C.  |  |  |
|    | d.  |  |  |
|    | e.  |  |  |
|    | f.  |  |  |
|    |   |  |  |
| 5. | What does the Wyden Amendment authorize?                  |  |  |

# GRANTS, AGREEMENTS, & OPERATING PLANS

- Organization
- Cooperation
- Authorities
- Cooperative Fire Agreements

### **Objectives:**

- Describe Interagency Cooperation Organizations from National to Local Level and the types of organizations.
- Explain how to obtain cooperation.



### **Objectives (continued):**

- Describe the authorities relating to USFS and DOI Grants and Agreements.
  - This program deals with Suppression Authorities; review the Agreement Authorities PowerPoint for NEPA and fuels related authorities.
  - Review the Agreement Instruments PowerPoint for more in-depth information and examples of each type of authority.
- Describe types of Cooperative Agreements.

### **Objectives (continued):**

- Identify national agreements that allow interagency participation in Fire Management activities.
  - Rural Fire Assistance
  - Federal Excess Property Program (FEPP)
- Identify steps in developing interagency cooperation and agreements locally.



### Introduction

- What is the basis for interagency cooperation?
- What do these groups do at the national, regional and local levels?



Federal Wildland Fire Management Policy 12/95

### "Guiding Principle"

Provides the basis for interagency cooperation:

Federal, state, tribal & local interagency coordination & cooperation are essential.

Increasing costs & smaller work forces require public agencies pool their human resources to successfully deal with the ever increasing & more complex fire management tasks.

Full cooperation among federal agencies & between the federal agencies & state, local & private entities results in a mobile fire management work force available to the full range of public needs.

### **Interagency Cooperative Groups**

Formal Groups formed to create interagency Cooperation.

- These groups work best when established in advance of a particular need.
- These groups are authorized or "mandated" by law to cooperate.

#### Membership

- Does not require an agency to give up their organizational identity.
- Membership cooperation is usually voluntary.

# National Level Coordination Group

# National Wildfire Coordinating Group (NWCG)

#### **PURPOSE:**

Improve the effectiveness and efficiency of federal, tribal, and state wildland fire management agencies in the United States.

- To avoid duplication.
- To provide a forum to work together.

# National Wildfire Coordinating Group (NWCG)

#### TITLE DEFINITION:

"National" .....sets the scope

"Wildfire" .....differentiates structural

& wildland missions

"Coordinating" .. cooperative nature

"Group" ..... working relationship

### **NWCG Membership**

- USDA Forest Service
- USDI Bureau of Land Management
- USDI National Park Service
- USDI Fish & Wildlife Service
- USDI Bureau of Indian Affairs
- National Association of State Foresters
- US Fire Administration
- Associate Member NFPA

### **NWCG Operations**

Provides a formal system to reach agreement on substantive fire management issues.

Uses various working groups to accomplish tasks.

Participating Agencies implement agreed upon policies, standards, & procedures through agency directives.

### **NWCG Working Teams**

- → Incident Command System
- → Prescribed Fire & Fire Effects
- → Training
- → Prevention, Education & Communications
- → Fire Equipment
- →Information Resource Management
- → Safety & Health
- → Publications Management
- → Advisory Group, Fire Danger Rating
- → Advisory Group, Fire Weather
- → Committees for short term projects

### Regional Level Coordination

### Regional Wildfire Coordinating Groups

#### **PURPOSE:**

To facilitate State/Regional Offices overseeing and coordinating implementation of interagency standards and policies developed nationally.

# Regional Coordinating Groups – Typical Membership

- → USDA Forest Service
- USDI Bureau of Land Management
- → USDI National Park Service
- → USDI Fish & Wildlife Service
- → USDI Bureau of Indian Affairs
- → State(s) Forestry or Natural Resource Management Agencies
- → State(s) FEMA or Emergency Services
  Agencies

# Regional Coordinating Group Operations

- Provides a forum to discuss standards of training, equipment, aircraft, suppression, & other operational areas.
- Facilitates Regional level interagency cooperative agreements, mobilization guides and defines levels of interagency coordination.

# Sub-Geographic Level Coordination (Local)

How interagency cooperation and coordination is developed locally.

### Sub-Geographic Operations

(Developed by Fire Program Managers to create and maintain cooperative relationships)

- Defines the process(es) to identify local sources, types and levels of interagency coordination.
- Through: local fire management plans, preparedness plans, mobilization guides, and cooperative agreements.

### Cooperation



### Introduction

What is cooperation?

Cooperation = Forming Partnerships

### **Partnerships**

- Bring two or more groups, organizations, companies, or government agencies together that are not otherwise connected.
- Usually formed due to mutual interests in the same resource or goals.
  - Work best if both sides have something to gain, and
  - Pursue goals that will affect other people and organizations.
- Can be made at various levels of a Federal Agency, depending on the scope of the mutual benefit.

## Each Partner should meet the following criteria when entering into a cooperative relationship:

#### **Competent Parties**

- Sufficient resources to complete their goals.

#### **Proper Subject Matter**

- Project must benefit each party's mission.

#### **Sufficient Participation**

- Active involvement, not just providing funding.

#### **Meeting of the Minds**

- All parties must understand the end result.

## There are three main activities used when cooperating with external partners.

Item 1:

Informal Agreements- Used when developing a relationship and deciding how the parties might want to work together in the future.

→ There is no formal (written) agreement. Use with caution

#### Main activities when cooperating (continued)

Item: 2

#### Memorandums of Understanding (MOU)

- A written document that outlines the partnership relationship.
  - → (who is involved; why it is beneficial; what type of cooperation will occur)
- Outlines procedural processes.
  - → (who is responsible for doing something and how)
- Does not allow for exchange of monies.

#### Main activities when cooperating (continued)

Item: 3

#### Agreements

- Formally documents the work to be performed as a result of the partnership relationship created.
- May be Contractual.
- May be Procedural.
- Can exchange or obligate funds.

# **Grants and Agreement Authorities**

# USDA Forest Service State & Private Forestry

- \*\*The Forest Service is the only federal agency with a specific mission to assist State Foresters & private landowners.
- #Fire Management provides technical & financial assistance through three Cooperative Fire programs.
  - Federal Excess Personal Property
  - Rural Fire Prevention & Control
  - Rural Community Fire Protection
- #Programs are administered by State Forester.

# Fire-related Agreement Authorities

#The federal agency entering into the partnership must have appropriate authority (law) prior to entering into any contract, grant, cooperative agreement and other agreement, which could result in the use, obligation, or other commitment of any Agency resources.

# Fire-related Agreement Authorities

#The Forest Service is the only agency that has a governing law to enter into agreements and it is why they usually take the lead in establishing agreements.

# Types of authority needed to enter into any agreement

- 1. <u>Authorization -</u> authority for the Agency to perform the type of work being proposed.
- 2. <u>Appropriation -</u> authority for the Agency to spend the type and amount of funds being proposed.
- 3. <u>Type of Agreement -</u> authority for the Agency to enter into the type of agreement being considered.

# Cooperative Fire Protection Types

#### Reciprocal

- Offset Protection
- Reimbursable
- Contractual or Fee Basis

# Fire-related Agreement Authorities – Suppression

#The Reciprocal Fire Act of May 27, 1955 (42 U.S.C. 1856a, Pub. L. 84-46).

This Act authorizes Forest Service to enter into reciprocal agreements with any fire organization maintaining fire protection facilities adjacent to National Forest System lands (FSM 1582).

## Reciprocal Cooperative Fire Agreement Part A:

- #Cooperators must have wildland suppression responsibilities.
  - → There is a mutual exchange of services; e.g. personnel, equipment, training, and services. (Reciprocal Fire Protection)
  - → Each party agrees to waive claims against the other.
  - → Covers pre-suppression, suppression, and emergency rehabilitation activities.

## Reciprocal Fire Protection Agreement Part A (continued):

- #This is a "Mutual Aid" agreement between partners with roughly equal fire service.
- #It is non-reimbursable fire protection service.
  - → From one agency to another.
  - → For a specific time period (usually 24 hours).
  - → When the agencies have resources are available.

# Reciprocal Cooperative Fire Agreement Part A (continued): Offset Fire Protection Agreement

- #These are Cooperative Fire Protection Agreements.
  Used when two or more agencies have intermingled,
  jurisdictional protection areas.
  - →There will be an equal exchange of fire protection services.
  - → Who will have primary direct protection of a geographic portion(s) of the area is based on the ease the of providing protection. (e.g., resource location)

#### **Offset Fire Protection Agreement (continued)**

- **\*\***Usually these agreements cover a large Geographic Area and typically are Regional Level Agreements:
  - May be based on workload.
  - May be based on acres.

## <u>The Reciprocal Fire Act of May 27, 1955 (42 U.S.C. 1856a, Pub. L. 84-46)</u>. Part B:

This section allows federal wildland fire fighting agencies to contract with other governmental entities for suppression and other like activities (pre-suppression, suppression, and emergency rehabilitation).

## Reciprocal Cooperative Fire Agreement, Part B (continued):

- → Used with state, county or city fire departments.
- → These are "assistance by hire" agreements.
- → Parties can file claims for damages against each the other.
- → There is no reciprocity with this entity, i.e., there is no mutual exchange of services, personnel, equipment, or training, as covered in Part A, because jurisdictions are not adjacent.

## Reciprocal Cooperative Fire Agreement Part B (continued):

#### #Part B (Format):

- It is considered a procurement action.
- Includes a Cooperative Fire Protection Agreement, citing Part B, and
- A Memorandum of Understanding is developed to outline responsibilities of each participating party.

# Reciprocal Cooperative Fire Agreement Part B (continued): Reimbursable Fire Protection

- Assistance-by-hire and resources are paid at an agreed rate.
- Assistance is requested.
- Example: continued assistance beyond first 24 hour period.

# Reciprocal Cooperative Fire Agreement Part B (continued): Contractual / Fee Basis

- Contract for one agency to provide protection for the other.
- Payment for service.

### **Types of Cooperation**

- Training
- 2. Prevention
- 3. Dispatching
- 4. Detection
- Aircraft
- 6. Weather Services & Weather Equipment
- 7. Shared Equipment, Facilities, & Positions

#### **Operating Plans**

**Master Cooperative Fire Agreement requirements** 

- Written plans with additional detail.
- Updated annually.
- Define local level cooperation
- Outlines local specifications for:
  - → Communications.
  - → Billing.
  - → Available resources.
  - → Procedures.
- These plans can include any number of Agencies that participate in the Master Agreement.

### Operating Agreement Example

#### 2002

Operating Plan
between

Central Oregon District, ODF
Malheur National Forest, USFS
Umatilla National Forest, USFS
Ochoco National Forest, USFS
Burns Interagency Fire Zone, BLM/FS
Prineville District, BLM
Vale District, BLM

# Central Oregon Operating Plan

- → Interagency Engines
- → Ordering Procedures
- → Billing Procedures
- → Training
- → Single Engine Air Tankers
- → Dispatching
- → Fire Prevention & Media Coordination
- → Fire Detection, Aerial & Fixed
- → Reciprocal Fire Assistance
- → Mutual Response Zones
- → Offset Fire Protection

## **Supplemental Fire Suppression Agreement**

Master Agreement Exhibit C

- ✓ Agencies Involved
- ✓ Effective Date
- ✓ Single or Unified Command
- √ Agency officials
- Suppression Actions & Land Mgmt.
   Considerations
- ✓ Geographic Responsibility

## Supplemental Fire Suppression Agreement

Master Agreement Exhibit C

- Agency responsible for Structure Protection.
- ✓ Special Operations conditions,
  - → Aircraft & Base Camp & Food.
  - → Incident Information & Fire Investigation.
- ✓ Costs.....
- ✓ Agency differences & each agency will meet its own standards......
- ✓ Signatures of participating Agencies.

#### **Supplement Project Plans**

Master Agreement Exhibit D

- Supplemental to Master Agreement
- Site specific project plans
- Rx burning assistance
- Thinning
- Equipment use
- Specifies
  - →Project
  - →Contacts
  - →Cost
  - → Billing procedures

# Administering Cooperative Efforts

- Cooperative Relationships are built.
- They need to be maintained.
- No agency can relinquish it's responsibility & authority.
- Recognize the cooperator's interests.
- Keep the cooperator informed.
- Do what you agreed = TRUST.
- Inform your subordinated & supervisors of agreements.

# Formal Steps to Developing Cooperative Agreements

- ✓ Identify partners and obtain commitment.
- ✓ Define the situation.
- ✓ Define the roles and responsibilities.
- ✓ Set goals and objectives.
- ✓ Document and implement.
- Evaluate and revise.

# Informal Steps to Developing Cooperative Agreements

- 1. Respect your cooperators values.
- 2. Trust your cooperator.
- 3. Develop working relationships.
- 4. Look for & discuss opportunities.
- 5. Ensure there is **mutual** benefit.
- 6. Develop & implement.
- 7. Evaluate & discuss, then revise.

### **Review**

- Agencies, Roles & Missions
- Cooperation
- Examples of Cooperative Agreements
- Examples of Operating Plans
- Steps to Developing Cooperative Relationships
- Necessity of Interagency Cooperation

### AUTHORIZATION AUTHORITY

# This presentation will focus on the <u>authorization</u> authority

- Please work with your unit budget and fiscal contact for the appropriation authority,
- And with your unit grant and agreement contact for the type of agreement authority.

### Fire-related Agreement Authorities -NEPA

- Cooperative Funds Act of 6/30/1914 (16 U.S.C. 498, as amended)
- Authorizes the Forest Service to accept money received as contributions toward cooperative work in forest investigations, management studies, or protection or improvements of National Forest System lands.

### Fire-related Agreement Authorities -NEPA

- Cooperative Funds Act of 6/30/1914 (16 U.S.C. 498, as amended)
  - For work anticipated under this authority, it is Forest Service's responsibility to perform and the cooperator is willing to reimburse the Forest Service for all or partial performance
  - Work shall benefit a Forest Service program, and the Forest Service shall accomplish the work by force account, that is, by using its own personnel, procurement contract, or other appropriate method.
  - Contributions shall be voluntary, not required, or in consideration of a resource or service furnished by the Forest Service.
  - Contributors do not need to be assessed for overhead charges if the contributors are unwilling to pay for them.
  - Contributions other than cash, checks, or money orders shall not be accepted. Acceptance of services, equipment, materials, and supplies are not authorized.
  - An example of use of this authority is where the cooperator is willing to reimburse the Forest Service for completion of NEPA documents.
    - · Funding is used to pay overtime, compensatory time, or hire additional personnel.
    - Forest Service determination that acceptance of funds renders public benefit; e.g. rationale provided to potential cooperators whose project(s) have been bumped.

    - Cooperator's full understanding that we will do a professional, impartial job drafting the NEPA document but there is no guarantee of a favorable decision to the cooperator.

### Fire-related Agreement Authorities - NEPA

- Cooperative Funds Act of 6/30/1914 (16 U.S.C. 498, as amended) (Format)
  - Project-specific work plan and budget.
  - Project cost includes overhead (burden rate).
  - Period of performance, generally work is performed within the same fiscal year the money is deposited.

### Fire-related Agreement Authorities – Fuels

• Granger-Thye Act of 4/24/1950 (16 U.S.C. 572)

Authorizes the Forest Service to perform work: (a) on state, county, municipal or private lands within or near National Forest land, or (b) for others who occupy or use National Forests or other lands administered by the Forest Service.

- Granger-Thye Act of 4/24/1950 (16 U.S.C. 572) (See FSM 1584.12)
  - Cooperator has work that they want done and they want the Forest Service to do it for them and the Forest Service has determined there must be some public benefit.
  - Any agreement has to be entered into voluntarily by the cooperator.
  - Contributions other than cash, checks, or money orders shall not be accepted. Acceptance of services, equipment, materials, and supplies are not authorized.
  - Full cost recovery.
  - Waiver of claims against the Forest Service.
  - No guarantee of success.
  - Funds must be deposited in advance, except for non-Federal entities whose regulations prohibit advance payments.
  - Covers pre-suppression, suppression, and emergency rehabilitation on a project basis.

- Granger-Thye Act of 4/24/1950 (16 U.S.C. 572)
   (Format [FSH \*, ])
  - Project-specific work plan and budget.
  - Project cost includes overhead (burden rate).
  - Period of performance, generally work is performed within the same fiscal year the money is deposited.

The Economy Act of 6/30/1932
 (31 U. S. C. 1535, P. L. 97-258 and 98-216)

Allows requisition of work, services, supplies, material or equipment from another Federal agency where both agencies have the authority to do the work.

- The Economy Act of 6/30/1932 (31 U. S. C. 1535, P. L. 97-258 and 98-216)
  - This authority can only be used with other Federal agencies.
  - Full cost recovery whether we are receiving or providing the service.
  - We cannot use this authority with tribal governments.
  - Payment can only be on a reimbursement basis.
  - Caution at yearend when negotiating Economy Act agreements, ensure the other Federal agency's funds are valid for the performance period (can the funds be used across fiscal years?).
  - We do not provide funding to another agency in order to accomplish <u>their</u> mission (illegal augmentation); e.g.:
    - Joint (BLM/FS) prescribed burn project with a common boundary under this
      authority, BLM funds cannot be used for activity on FS land and FS funds cannot be
      used for activity on BLM lands.

- The Economy Act of 6/30/1932
   (31 U. S. C. 1535, P. L. 97-258 and 98-216) (Format)
  - Standard narrative template,
  - AD-672, or
  - Other agency format can be used

Regardless of the agreement format, the following always must be addressed:

- Project description
- Financial plan
- Performance period

- Interior and Related Agencies Appropriations Act of 1992 (P. L. 102-154, (Challenge Cost-Share) (FSM 1587)
- Authorizes cooperating with others in developing, planning and implementing mutually beneficial projects that enhance Forest Service activities, where cooperators provide matching fund or inkind contributions.
- Cooperators may be public or private agencies, organizations, institutions and individuals.

### Joint Hazardous Fuel Reduction Projects

• The previous authorities discussed generally are used with other governmental entities that we have a history of working on projects. With the advent of the Healthy Forest Initiative, National Fire Plan activities and the like we are now coordinating with a whole new group of folks like Fire Safe Councils, Home Owner associations, individual land owners, nonprofits and others who have taken a greater interest in forest resource management. We have several authorities that allow us to work with these different groups.

### Joint Hazardous Fuel Reduction Projects

#### I.Opportunity:

Finding the correct vehicle to allow the public to implement hazardous fuel reduction projects on NFS lands.

#### II. History:

There has been a huge emphasis in the past couple of years on identifying, then reducing the fire hazard not only for National Forest System lands, but other lands that adjoin it. The recognition of this hazard is shown by the increase in the numbers of Fire Safe Councils, and other like-minded organizations that have a keen interest in the safe guarding of their respective communities. The recently approved Kuehl Bill (SB1369, signed September 23, 2004), which increases structure clearance in the wildlands of California from 30 to 100 feet, is another example of actions taken to reduce fire damage on private property.

The Forest Service, along with other Federal and State entities, have made millions of dollars available in support of these fuel reduction projects. The types of projects that we are supporting run the full gamut from stand alone projects where there is no involvement needed by the Forest Service, to others where the projects are being actively coordinated between the parties; e.g., fuel reduction through prescribed fire or fuel break planning that is on both private and public lands. There are many examples where a community has the funding to take on project(s) but it may be that while the project is on private lands, to make the project as effective as possible additional work should be taking place on bordering NFS lands. For a variety of reasons; e.g., funding restraints, work force management, or priority setting, there are times when the Forest Service cannot participate in a timely fashion. We have had several instances where the other parties, at no cost to the Forest Service were more than willing to continue their projects on to NFS lands.

We need to have a clear understanding that no one can work on NFS lands without our permission. This permission may be in the form of a contract, Special Use Permit, Volunteer Agreement, or other agreement. What all these have in common is that they are all written documents.

#### III. Authorities:

This "white paper" is not intended to take the place of Forest Service policy or regulation. It also cannot be used as support to circumvent other, more appropriate methods of getting the work accomplished. The sole purpose of this paper is to offer viable methods to partner with others.

Each situation is going to be a little different, but we have the existing authorities to partner with others and leverage contributions so that both parties benefit.

The following example illustrates the intent of this paper. A group of land owners, using their own funding, are voluntarily performing hazardous fuel reduction on their lands. Several of the buildings or structures are less than 100 feet from the Forest Service lands. They would like to continue the work they are doing on their lands onto the NFS lands so that the end result will be a much stronger and more useful fuel break.

#### Several questions to consider include:

- Are there benefits to both them and us? Yes.
- Do we have the authority to enter into a partnership regarding this type work? Yes.
- Can we enter into partnerships with individuals? Yes.
- Can we enter into partnerships with organizations? Yes.
- Can we enter into partnerships with a loosely formed group of individuals that have common interests but no formal charter? No. This last one is pretty simple principle to grasp; if it's a group of individuals then no single individual has the legal authority to bind the others. In this last case you might consider getting the group together with a local Fire Safe Council, or other legally recognized entity, then entering into a partnership with that entity as the umbrella for the others to participate.

There are three (3) authorities that lend themselves to allowing others to work on projects on NFS lands:

- 1. Challenge Cost Share (CS) (P.L. 102-154)
- 2. Participating Agreement (PA) (P.L. 94-148)
- 3. Wyden Amendment (WY) (P.L. 107-63)

All three require mutuality of benefit and interest in the project results; e.g., if there is no benefit to the Forest Service then we should not enter into the relationship. As a general rule, use of CS and PA authorities are restricted to projects on NFS lands. WY can be used for projects both on and off NFS lands.

If, under any of the three authorities cited above, our partners are going to be performing work on NFS lands, then in the agreement it is our responsibility to be very specific (prescriptive) on exactly what activities are to be performed and to what standard. It is also our responsibility to assure that adequate NEPA analysis is in place that covers this type of work in that specific location. We are also responsible to monitor all work to insure compliance with the established standards. These are examples of our contribution to the partnership. The partner's contribution will include items like labor, equipment, and supplies. Even if there is no transfer of funds between the Forest Service and the partner there is still value being exchanged so an authority has to be cited and a financial plan developed.

If you think you may have a situation that meets some of the things discussed herein we strongly encourage you to get together with your Grants & Agreement (G&A) Specialist to discuss project scope, authority, format, and agency requirements. For example, if the partners plan to work on NFS lands using Federal dollars they received via another grant, then it may be that those dollars cannot be used on Federal public lands. Alternatively they may be used, but cannot count as a match under your proposed agreement with them. These are the sorts of questions that your G&A Specialist can sort out for you.

A related question has come up on whether or not the Forest Service can perform work off NFS lands without compensation; e.g., perform a prescribed burn on private lands or other hazardous fuel reduction projects. The simple answer is yes we can, **IF** (1) there is direct benefit to NFS lands, (2) we have written permission by the landowner to perform the work, and (3) we have a liability release from the landowner, in case there is damage to the property as a result of our presence there.

#### IV. Summary

The authorities exist to allow others to work on NFS lands. It is our responsibility to insure that the work to be done (1) has direct benefit, (2) is well defined, (3) a written agreement is in place, and (4) subsequent work is monitored. These authorities are an excellent way to leverage opportunities for improving relationships with neighboring landowners, getting beneficial work done on NFS lands and adjoining property that directly affects NFS lands, and opening the door for future partnerships.

- Interior and Related Agencies Appropriations Act of 1992 (P. L. 102-154, (Challenge Cost-Share) (FSM 1587)
- Authorizes cooperating with others in developing, planning and implementing mutually beneficial projects that enhance Forest Service activities, where cooperators provide matching fund or inkind contributions.
- Cooperators may be public or private agencies, organizations, institutions and individuals.

- Interior and Related Agencies Appropriations Act of 1992 (P. L. 102-154, (Challenge Cost-Share) (FSM 1587.12)
  - Expenditures shall be commensurate with value received.
  - Forest Service may only reimburse cooperator for actual costs incurred.
  - No advance payments allowed.
  - Match can be cash, real or personal property, services, and/or in-kind contributions.
  - Financial plans required prior to start of work.
  - Federal Acquisition Regulations might apply:
    - If the Forest Service contributes more than 50% of the cost of a third-party contract, then the Forest Service has to be the contracting agent; e.g. if the Forest Service and a Fire Safe/FireWise Council contract prescribed burns and the Forest Service puts in 51% of the contract price, then the Forest Service must do the contract.

- Interior and Related Agencies Appropriations Act of 1992 (P. L. 102-154, (Challenge Cost-Share) (FSM 1587.12) (Format)
  - Clear description of the terms and conditions for performance of the work.
  - Includes a financial plan reflecting a detailed breakdown of costs if applicable.
  - Specifies an appropriate period for performance.
  - Includes mandatory Forest Service provisions.

- Cooperative Funds and Deposits Act of 12/12/1975 (16 U. S. C. 565al-a3, P. L. 94-148)
- Authorizes the Forest Service to enter into cooperatively performed, mutually beneficial projects with public and private agencies, organizations, institutions, or persons.

- Cooperative Funds and Deposits Act of 12/12/1975 (16 U. S. C. 565al-a3, P. L. 94-148)
  - Tort liability <u>may be</u> conveyed to cooperators; e.g. if an individual is injured while performing under this agreement, Forest Service would be responsible for workers compensation.
  - Forest Service may provide reimbursable or advance payments.
  - Expenditures shall be commensurate with value received.
  - No advance payments allowed.
  - Match can be cash, real or personal property, services, and/or in-kind contributions.
  - Financial plans required prior to start of work.
  - Federal Acquisition Regulations might apply:
    - If the Forest Service contributes more than 50% of the cost of a third-party contract, then
      the Forest Service has to be the contracting agent; e.g. if the Forest Service and a Fire
      Safe/FireWise Council contract prescribed burns and the Forest Service puts in 51% of
      the contract price, then the Forest Service must do the contract.

- Cooperative Funds and Deposits Act of 12/12/1975 (16 U. S. C. 565al-a3, P. L. 94-148) (Format)
  - Clear description of the terms and conditions for performance of the work.
  - Includes a financial plan reflecting a detailed break-down of costs if applicable.
  - Specifies an appropriate period for performance
  - Includes mandatory Forest Service provisions.

- Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 106-73, Section 330, Title III Watershed Restoration and Enhancement Authority).
- This Act authorizes the Forest Service to enter into cooperative agreements with willing Federal, tribal, State, and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat, and other resources on public or private land that benefit those resources within the watershed (FSM 1587.15).

- Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 106-73, Section 330, Title III Watershed Restoration and Enhancement Authority).
- Authority is available through Fiscal Year 2005.
- There is no specific Wyden appropriation. Funds must be available within existing appropriation; e.g., wildlife funds for wildlife projects.
- There is no mandated match requirement.
- Ensure agreement terms protect public investment on nonfederal lands.
- Project(s) must comply with all Federal, state, and local laws and regulations;
   e.g. NEPA stills applies.
- When working off NFS lands:
  - Must be direct benefit to NFS lands.
  - Liability and long term maintenance responsibilities need to be addressed.
  - Written permission by landowner to perform the work.

### Fire-related Agreement Authorities

Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 106-73, Section 330, Title III Watershed Restoration and Enhancement Authority) (Format)

- Agreement template can be either Federal Assistance or Other Agreement.
- Clear description of the terms and conditions for performance of the work.
- Includes a financial plan reflecting a detailed break-down of costs if applicable.
- Specifies an appropriate period for performance.
- Includes mandatory Forest Service provisions.

## AGREEMENT INSTRUMENTS

### Partnerships

• Partnerships are the foundation of the Forest Service and are typically begun with the expectation that there will be a long-term relationship developed

(from the first sip of coffee to the leftover grounds in the coffee pot).

### Partnerships

- There are three main activities when working with external parties:
  - (1) developing the relationship and deciding how the parties might want to work together in the future (no formal agreement).
  - (2) documenting the relationship ( $\underline{MOU}$ ).
  - (3) documenting the work to be performed as a result of the relationship (all other instruments).

### Partnerships

- Just the facts:
  - Forming a partnership involves bringing together two or more groups, organizations, companies, or government agencies that are not otherwise connected.
  - Partnerships work best if both sides have something to gain and you are pursuing goals that will affect other people and organizations.
  - Most often partnerships are formed due to mutual interests in the same resource or goals.
  - Depending on the scope of the mutual benefit partnerships can be made at various levels of a Federal Agency.

### Partnerships

### • EACH PARTNERSHIP SHOULD MEET THE FOLLOWING:

- Competent Parties Sufficient resources to complete their goals.
- Proper Subject Matter Project must benefit each party's mission.
- Sufficient Participation Active involvement, not just providing funding.
- Meeting of the Minds All parties must understand the end result.

### Partnerships

- Questions to ask prior to entering into a partnership:
  - Are the appropriate project and administrative personnel involved?
  - Can the appropriated funds be used for the purpose intended?
  - Is there a potential conflict of interest or the appearance of conflict of interest?
  - Will the "cooperator" be used as a "straw man" to accomplish something indirectly that we are forbidden to do directly?
  - Is it a donation/gift? If so, are there conditions attached?
  - Is the cooperator capable of meeting its obligations; i.e., financial, skills and manpower?
  - Is the Forest Service capable of meeting its obligations; i.e., financial, skills and manpower?
  - Is there sufficient lead-time to acquire funding, materials, project approvals, etc?
  - Does this activity belong on National Forest System lands; i.e., putting up advertisement signs, endorsements?

### Partnership Examples and Resources

• USFS National Partnership Office www.fs.fed.us/aboutus/partnership/index.shtml

 Partnership Resource Center - Clearinghouse for information and tools for creating partnerships

www.partnershipresourcecenter.org/

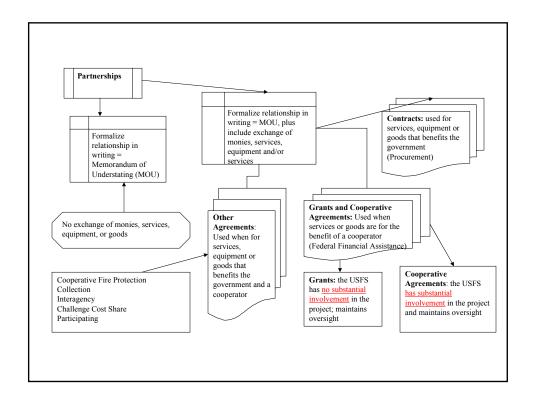
### Contracts, Grants and Agreements Overview

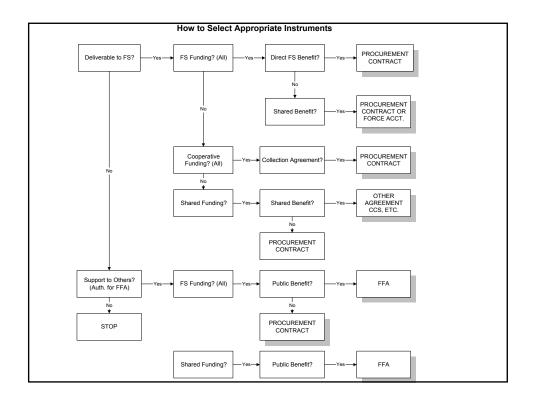
- There are three broad types of instruments that document work with our external parties:
  - -(1) Contracts
  - -(2) Grants and Cooperative Agreements (Federal Financial Assistance)
  - -(3) Other Agreements

### Why Contracts, Grants and Agreements?

- To meet program needs:
  - in an orderly manner
  - ensuring sound procurement practices
  - encouraging effective competition
  - maintaining accountability

- To provide a flexible management tool that accommodates:
  - emergencies
  - budget changes
  - changes in program direction





### Contracts, Grants, and Agreements Contracts (Procurement)

- Contracts are used when:
  - (1) the principle purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the <u>direct benefit</u> or use of the United States Government.
  - (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.

### Contracts, Grants, and Agreements Grants and Agreements (FFA)

- Grants and Cooperative Agreements (FFA) are used when:
  - The principal purpose of the relationship is to transfer a thing of value to a recipient to carry out a public purpose <u>for the benefit of the recipient.</u>
    - A <u>Grant</u> is appropriate where the Forest Service <u>is not</u> substantially involved.
    - A <u>Cooperative Agreement</u> is appropriate when the Forest Service <u>is</u> substantially involved.
    - These transactions are governed by Office of Management and Budget Circulars and the Code of Federal Regulations.

## Contracts, Grants, and Agreements Other Agreements

- Other Agreements are <u>not</u> considered procurement or Federal Financial Assistance relationships.
- These instruments typically involve a joint accomplishment of work and have <u>direct</u> <u>benefits to both the cooperator and the</u> <u>Forest Service (mutual benefit)</u>.

### Types of Other Agreements Related to the Fire Program

- Memorandum of Understanding
- Cooperative Fire Protection
- Collection
- Interagency
- Challenge Cost Share
- · Participating

## Other Agreements – Memorandum of Understanding

• A written plan between the Forest Service and other parties for carrying out their separate activities in a coordinated and mutually beneficial manner and for documenting a framework for cooperation.

### Other Agreements – Memorandum of Understanding

Example of a national MOU:

The Nature Conversancy and USFS

- The purpose of the MOU is to provide a framework for cooperation and
  coordination in the context of Forest Plan development and implementation,
  research, and State and private forestry with respect to a wide range of
  activities, to conserve fish, wildlife, plants, ecosystems and other biological
  diversity on National Forest System and other lands, including Nature
  Conservancy preserves, which would appropriately serve the best interests of
  the people of the United States.
- htpp://fsweb.wofs.fed.us/aqm/ganda/mou%27s.htm

### Other Agreements – Cooperative Fire Protection

Executed under the following authorities:

- (1) Granger-Thye Act of April 24, 1950
- (2) The Reciprocal Fire Act of May 27, 1955
- (3) The Cooperative Funds and Deposits Act of December 12, 1975 (4)
- The Cooperative Funds Act of June 30, 1914

### Other Agreements – Cooperative Fire Protection, Part A

- Cooperators must have wildland suppression responsibilities.
- Mutual exchange of services; e.g. personnel, equipment, training, and services.
- Each party agrees to waive claims against the other.
- Covers pre-suppression, suppression, and emergency rehabilitation.

## Other Agreements – Cooperative Fire Protection, Part A

- Part A (Format [FSH \*]):
  - Master Cooperative Fire Protection Agreement:
    - · Generally between Forest Service, State(s), and other Federal agencies.
  - Local Cooperative Fire Protection Agreement:
    - Five-year performance period.
    - · Protection area.
    - · Definitions.
    - [pull out other bullets from R-5 generator]
  - Annual Operating Plans are required for both Master and Local:
    - · Specific resources identified.
    - Costs
    - · Local management considerations/actions.
    - · Communication plan; e.g. radio frequencies, phone numbers.

## Other Agreements – Cooperative Fire Protection, Part A Examples

#### **Participants:**

State Of Arkansas, Arkansas Forestry Commission Forest Service: Ouachita And Ozark-St. Francis National Forests

www.fs.fed.us/r8/ouachita/fire/web\_files/afc\_coop\_04.htm

#### Participants:

Forest Service (Regions 4, 5, and 6); National Park Service (Pacific West Region); Bureau of Land Management (California and Nevada); California Department of Forestry

www.fs.fed.us/r5/fire/cooperators/4-party agrmt fina 02.pdf

## Other Agreements – Cooperative Fire Protection, Part B

- Can contract with other governmental entities for suppression and other like activities; e.g. IMT non-Federal team members, using fire districts where there is no reciprocity (assistance by hire).
- Parties can file claims for damages against each other
- Generally no exchange of services; e.g. personnel, equipment, training, and services.
- Covers pre-suppression, suppression, and emergency rehabilitation.

### Other Agreements – Cooperative Fire Protection, Part B

- Part B (Format FSH \*):
  - Procurement action
  - Cooperative Fire Protection Agreement, citing Part B [link to OES]
  - Memorandum of Understanding, outlining responsibilities of the parties

To identify which Part B format to use, please check with your AQM unit

# Other Agreements: Cooperative Fire Protection, Part B Example

#### Participants:

Forest Service (Region 5);

National Park Service (Pacific West Region);

Bureau of Land Management (California);

US Fish and Wildlife Service (California and Nevada);

California Department of Forestry;

California Office of Emergency Services

www.fs.fed.us/r5/fire/cooperators/rev03 ca fire assist agrmt 2002-2006

### Other Agreements – Collection

• The primary point to remember is that as a Federal agency, the Forest Service must have legislative authority to accept funding from other non-FS entities. It is not enough that someone wants to give us money; there must be legislation that allows us to collect and spend it.

### Other Agreements – Collection

Executed under the following authorities:

- (1) Granger-Thye Act of April 24, 1950
- (2) The Cooperative Funds Act of June 30, 1914

### Other Agreements – Collection

The instrument to accept money, equipment, property, or products from a non-Federal party to carry out a purpose authorized by law. These agreements may involve both trust fund collections (advances) and reimbursements.

### Other Agreements – Collection

#### Format:

- Project-specific work plan and budget.
- Project cost includes overhead (burden rate).
- Period of performance, generally work is performed within the same fiscal year the money is deposited.

### Other Agreements – Collection

#### Examples:

\_ \*

## Other Agreements – Intra-Agency

May be used when one Forest Service unit is in a position to provide materials, supplies, equipment, work, or services of any kind that another Forest Service unit needs procured or performed to accomplish its mission.

## Other Agreements – Inter-agency

#### Format:

\_ \*

## Other Agreements – Interagency

- Authority:
  - The Economy Act of 6/30/1932
    (31 U. S. C. 1535, P. L. 97-258 and 98-216)

Allows requisition of work, services, supplies, material or equipment from another Federal agency where both agencies have the authority to do the work.

## Other Agreements – Interagency

This authority can only be used with other Federal agencies.

- Full cost recovery whether we are receiving or providing the service.
- We cannot use this authority with tribal governments.
- Payment can only be on a reimbursement basis.
- Caution at yearend when negotiating Economy Act agreements, ensure the other Federal agency's funds are valid for the performance period (can the funds be used across fiscal years?).
- We do not provide funding to another agency in order to accomplish <u>their</u> mission (illegal augmentation); e.g.:
  - Joint (BLM/FS) prescribed burn project with a common boundary under this authority, BLM funds cannot be used for activity on FS land and FS funds cannot be used for activity on BLM lands.

## Other Agreements – Interagency

#### Format:

- Standard narrative template,
- AD-672, or
- · Other agency format can be used

Regardless of the agreement format, the following always must be addressed:

- Project description.
- Financial plan.
- Performance period.

## Other Agreements – Interagency Examples

Cooperative Management Agreement for 2003-2008 Participants:

- Bureau of Land Management,
- Bureau of Indian Affairs,
- National Park Service,
- Fish and Wildlife Service,
- US Forest Service

Interagency Cooperative Fire Agreement Participants

- Bureau of Land Management, Wyoming
- Bureau of Indian Affairs, Rocky Mountain Region
- Forest Service, Rocky Mountain and Intermountain Regions
- State of Wyoming, State Board of Land Commissioners,
- Office of Lands and Investments and
- Wyoming State Forestry Division

## Other Agreements – Challenge Cost Share

- Authority:
  - Interior and Related Agencies Appropriations
     Act of 1992 (P. L. 102-154, (Challenge Cost-Share) (FSM 1587)

## Other Agreements – Challenge Cost Share

- Expenditures shall be commensurate with value received.
- Forest Service may only reimburse cooperator for actual costs incurred.
- No advance payments allowed.
- Match can be cash, real or personal property, services, and/or inkind contributions
- Financial plans required prior to start of work
- Federal Acquisition Regulations might apply:
  - If the Forest Service contributes more than 50% of the cost of a thirdparty contract, then the Forest Service has to be the contracting agent; e.g. if the Forest Service and a Fire Safe/FireWise Council contract prescribed burns and the Forest Service puts in 51% of the contract price, then the Forest Service must do the contract.

### Other Agreements – Challenge Cost Share

#### Format:

- Clear description of the terms and conditions for performance of the work.
- Includes a financial plan reflecting a detailed break-down of costs if applicable.
- Specifies an appropriate period for performance.
- Includes mandatory Forest Service provisions.

## Other Agreements – Challenge Cost Share

#### Examples:

\_ \*

## Other Agreements – Participating

- Authority: Cooperative Funds and Deposits Act of 12/12/1975 (16 U. S. C. 565al-a3, P. L. 94-148)
- Authorizes the Forest Service to enter into cooperatively performed, mutually beneficial projects with public and private agencies, organizations, institutions, or persons.

## Other Agreements – Participating

Tort liability <u>may be</u> conveyed to cooperators; e.g. if an individual is injured while performing under this agreement, Forest Service would be responsible for workers compensation

- Forest Service may provide reimbursable or advance payments
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#### Format:

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- Includes a financial plan reflecting a detailed break-down of costs if applicable.
- Specifies an appropriate period for performance.
- Includes mandatory Forest Service provisions.

## Other Agreements – Participating

#### Examples:

- Cooperatively develop publications and audiovisual productions relating to environmental education and forest history.
- Develop conferences jointly where the theme relates to environmental education or forest history.

## Other Agreements – Wyden Authority

- Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 106-73, Section 330, Title III Watershed Restoration and Enhancement Authority).
- This Act authorizes the Forest Service to enter into cooperative agreements with willing federal, tribal, state, and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat, and other resources on public or private land that benefit those resources within the watershed (FSM 1587.15).

## Other Agreements – Wyden Authority

- Authority is available through Fiscal Year 2005.
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- There is no mandated match requirement.
- Ensure agreement terms protect public investment on nonfederal lands.
- Project(s) must comply with all Federal, state, and local laws and regulations; e.g. NEPA stills applies.
- When working off NFS lands:
  - Must be direct benefit to NFS lands.
  - Liability and long term maintenance responsibilities need to be addressed.
  - Written permission by landowner to perform the work.

### Other Agreements – Wyden Authority

#### Format:

- Agreement template can be either Federal Assistance or Other Agreement.
- Clear description of the terms and conditions for performance of the work.
- Includes a financial plan reflecting a detailed breakdown of costs if applicable.
- Specifies an appropriate period for performance.
- Includes mandatory Forest Service provisions.

## Other Agreements – Wyden Authority

### Examples:

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### Templates of agreements

Useful WO website for samples of agreements and letters http://fsweb.wo.fs.fed.us/aqm/ganda/templates & forms.htm

#### **Local Agreements**

R5 Agreement Generator:

used to develop local cooperative fire agreements between national forests and fire departments. Has multiple "drop down" clauses to handle various cooperative needs and situations. fsweb.fire.r5.fs.fed.us/coop/coop.shtml